



**UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATOR LAW JUDGES**

Date Prepared: 5-21-79

RE: JOHN ANCHESTEGUI AND WESTERN RANGE ASSOCIATION (WRA), CASE NO. 79-TLC-16; AND CUNNINGHAM SHEEP CO. AND WRA, CASE NO. 79-TLC-17.

REFERENCED EMPLOYER(S), HEREAFTER EMPLOYER, REQUESTED EXPEDITED ADMINISTRATIVE JUDICIAL REVIEW UNDER 20 C.F.R. 655.212 FROM DENIAL(S) BY REGIONAL ADMINISTRATOR (RA), OF TEMPORARY LABOR CERTIFICATION(S) FOR TWO (2) SHEEPHERDERS, ONE FOR EACH REFERENCED EMPLOYER. REQUEST FOR REVIEW RECEIVED MAY 1, 1979, APPEAL FILE(S) RECEIVED MAY 21, 1979.

ON APRIL 27, 1979, RA J.C. RAMAKER ADVISED - JOINT EMPLOYERS IN BOTH REFERENCED CASES THAT TEMPORARY LABOR CERTIFICATION APPLICATIONS FOR TWO SHEEPHERDER WORKERS WERE DENIED

BECAUSE FOUND DEFICIENT (AF-4). THE DENIAL WAS BASED ON THE UNDULY RESTRICTIVE REQUIREMENT OF SHEEPHERDER TRAINING FROM AGE OF SIX (6) YEARS. RA FOUND THAT THE RECRUITMENT OF U.S. WORKERS WOULD BE ADVERSELY EFFECTED (20 C.F.R. 655.204(c)) NOTING THAT DICTIONARY OF OCCUPATIONAL TITLES INDICATES THAT STANDARD TRAINING REQUIRED FOR OCCUPATION IS "OVER 30 DAYS, UP TO INCLUDING 3 MONTHS." EMPLOYER CONTENDS DENIAL UNTIMELY. WHILE 28 DAY DELAY FROM RECEIPT OF APPLICATION MAY NOT CONFORM TO "PROMPTLY" 20 C.F.R. 655.204(c), SUCH DELAY DOES NOT RENDER DECISION INVALID.

EMPLOYER ALSO ADVISES THAT IT HAS AUTHORIZED THE DELETION OF THE JOB REQUIREMENT WHICH WAS GROUND FOR DENIAL. (SUCH REQUIREMENT WAS THE ONLY BASIS FOR DENIAL.)

GENERAL ADMINISTRATION LETTER NO. 24-79 PROVIDES IF AN APPLICATION IS TO BE DENIED AND THE DENIAL IS BASED ON A CONDITION WHICH CAN BE CORRECTED BY AMENDING THE APPLICATION THE RA SHALL OFFER THE EMPLOYER AN OPPORTUNITY TO AMEND WITHIN FIVE DAYS.

IT APPEARS THAT THE EMPLOYER WAS NOT AFFORDED AN OPPORTUNITY TO

AMEND ITS APPLICATION PRIOR TO FINAL DENIAL BY THE RA. THIS  
CONSTITUTED PROCEDURAL ERROR WHICH SHOULD BE CORRECTED SO THAT  
THE RECRUITMENT PROCEDURES FOR LABOR CERTIFICATION MAY PROCEED. 20  
C.F.R.655.205. (SEE, SLIMAN SHEEP CO., ET AL., 79-TLC 10, 11, ISSUED APRIL 24, 1979).

ACCORDINGLY , TO ALLOW THE EMPLOYER AN OPPORTUNITY TO AMEND ITS APPLICATION, THE RA'S DECISION IS REVERSED. 20 C.F.R. 655.212(b).

STUART A. LEVIN  
ADMINISTRATIVE LAW JUDGE  
U.S. DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES